IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2022 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RANCHHODBHAI JETABHAI PARMAR & 1 - Appellant(s)
Versus
TRANSPORT MANAGER,AHMEDABAD MUNICIPAL TRANSPORT SERVICE - Defendant(s)

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Appearance :

MR HEMANT S SHAH for Appellant(s) : 1 - 2.
MR HS MUNSHAW for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 13/09/2006

ORAL JUDGMENT

1. The parents of the deceased Rekhaben has approached this Court under Section 173 of the Motor Vehicles Act [the “Act” for short] for the enhancement of

the compensation awarded by the Motor Accident Claims Tribunal No. III, at Ahmedabad in MACP No. 237/1995. The judgment and award made by the Tribunal are dated 19th January, 1998. The Tribunal has awarded Rs.34,200=00 by way of compensation with running interest at the of 12% per annum from the date of filing of the application till the realization, if the amount was deposited within a period of two months from the date of the award and if it was not deposited within that period, the rate of interest was fixed at 15% per annum. The Tribunal has also given other directions which have been stated in the operative portion of the order.

2. On 14th December, 1993, unfortunate girl named Rekhaben was travelling in a bus owned by Ahmedabad Municipal Transport Service i.e., the respondent and when it reached the bus stand near the place known as Badia kaka, the deceased tried to alight from the bus, but while she was in the process of doing it, the driver all of a sudden started it. As a result of that, Rekhaben fell down and sustained serious head injuries, to which she subsequently succumbed. The appellants, therefore, preferred petition under the provisions of the Act for claiming compensation. It was averred that the deceased was aged about 18 ½ years. She was doing typing work and

earning around Rs.15 to 20/- per day. The appellants, therefore, claimed a sum of Rs.1,50,000=00. The respondent resisted the claim by filing written statement at Exh. 16. The averments made in the petition were denied. It was contended that the deceased tried to jump from the running bus when it reached the cross roads near the place called Badia Kaka and as a result of the same, she sustained injures and ultimately, expired.

3. At the proceedings, friend of Rekhaben namely Kalpanaben was examined by the appellants at Exh. 30. The respondent examined driver of the bus namely Kodji Jeshangji at Exh. 31. A criminal complaint lodged with the Police with regard to the present incident was produced at Exh. 24. The Tribunal on appreciating the oral evidence of the witnesses with regard to negligence, came to the conclusion that the driver of the bus was negligent to the extent of 90% whereas the deceased girl was negligent to the extent of 10%. The Tribunal on the basis of the evidence lead before it, determined the notional income of the deceased at Rs.600=00 per month, i.e., Rs.7,200=00 per annum. It applied multiplier of 4 and calculated the loss of dependency benefit at Rs.28,800=00 and added Rs.10,000=00 to the same towards loss of expectancy of life. From the aforesaid amount,

deduction was made at the rate of 10% for the negligence attributed to the deceased. Thus compensation of Rs.34,200=00 was determined by the Tribunal.

4. In the present appeal enhancement of the said compensation is prayed for. It is submitted by Mr. Hemant Shah learned advocate for the appellants that the income of the deceased assessed by the Tribunal is on lower side. According to him, the Tribunal has not taken into consideration the prospective increase in the income. He has also submitted that multiplier is very less, considering the age of the parents. He has submitted that at least 15 years multiplier was required to be applied. He has further submitted that deduction of 10% on the ground of negligence of the deceased is also wrongly made. As against that, Mr. Munshaw learned advocate for the respondent has supported the judgment of the Tribunal. In his submission the assessment of compensation made by the Tribunal is just and proper and no interference by this Court is required.

5. Having perused the record and proceedings of the case, and having heard the learned advocates for the respective parties, it clearly appears that Rekhaben, the deceased, while she was stepping out of the bus fell down

and received injuries. She fell down because while she was in the process of getting down, the bus was started by the driver. Of course, it is the say of the driver that when the bus had approached the cross roads, on account of curvature it was slowed down and the deceased tried to jump out of it. It is not disputed that the deceased was around 18 ½ years old. In view of the same, I will have to first scrutinize the evidence of the witnesses to ascertain whether there was any negligence on the part of the deceased. For that purpose, the appellants have examined Kalpanaben who was her friend and co-passenger on that day. She has stated that while approaching bus stand, the driver had stopped the bus just before the bus stand, near the cross roads at a place called Badia Kaka. At that time, Rekhaben, was trying to get off the bus and while her one foot was on the foot board of the bus and one foot on the ground, the driver all of a sudden put the bus in motion. As a result of that she fell down on the ground and sustained serious head injuries. In the cross examination she has flatly denied that while the bus was in motion she tried to jump out of it. As against that the evidence of the driver Kodji is that near the cross roads while he was negotiating turn, he had slowed down the bus and at that time the deceased tried to jump out of the bus and fell

on the ground sustaining serious injuries. If both the sets of evidence are carefully considered, it clearly appears that the driver of the bus is not telling the truth. Naturally because there is F.I.R., lodged against him, there is every possibility that his version may be slightly tainted one because he would try to save his skin. The evidence of Kalpanaben is very natural and plausible. When the bus stand was near, there was no need for the deceased to jump out of the bus while it was in motion. Naturally the conduct on her part would be to wait till the bus was halted. In this view of the matter, the finding given with regard to 10% negligence on the part of the deceased by the Tribunal clearly appears to be erroneous and it is required to be quashed.

6. The next question for consideration is with regard to monthly income of the deceased. The Tribunal has assessed it notionally at Rs.600=00. However, the Tribunal has completely lost the sight of the fact that she was a girl aged 18 ½ years. She was doing typing work. Gradually, with the passage of time, her work would have increased and she would have earned more. Considering the prospective increase of the income the Tribunal ought to have assessed it at Rs.35% per day i.e. Rs.1050=00 per month. She might have spent Rs.150=00 on

her own. Deducting the said amount the dependency benefit work out to Rs.900=00 per month. The Tribunal has applied multiplier of 4, which is on very lower side. It is in evidence that so far as appellant no. 1 is concerned, he was aged 45 years, whereas applicant no. 2 was aged 41 years. It is true that the girl would have got married in due course and would have left the parental home. But considering her age as well as the age of the parents, the Tribunal ought to have applied multiplier of 10 instead of 4. If that be so, the monthly loss could be assessed at Rs.900=00 and annually Rs.10,800=00 x 10, that would come to Rs.1,08,000=00. That would be the correct loss of dependency benefit. Further considering the finding given by this Court with regard to negligence of 10% is not required to be deducted from this award. The conventional amount awarded by the Tribunal will remain the same.

7. With the aforesaid modifications, the appeal is partly allowed with no order as to costs.

R & P, if any, to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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